

EPA And U.S. Army Corps of Engineers Begin Engagement on Formal Rulemaking to Redefine “Waters of the United States”



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On July 30, 2021, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (collectively, the Agencies) [announced the beginning](#) of their formal regulatory rulemaking to roll back the Trump Administration’s Navigable Waters Protection Rule (NWPR), which redefined “waters of the United States” (WOTUS) under the federal Clean Water Act (CWA). The definition of WOTUS dictates those activities that will or will not require CWA permitting in connection with dredging or filling in waterways and wetlands, thereby carrying significant environmental, financial, and legal implications. , The Agencies’ press release stated their commitment to “developing a reasonable, effective, and durable definition of WOTUS that protects public health, the environment, and downstream communities while supporting economic opportunity, agriculture and other industries.”

The revision process will include two rulemakings. First, the Agencies will restore the regulations that were in place to define WOTUS up until 2015, while also incorporating recent and relevant Supreme Court decisions. Once promulgated, this will overturn the NWPR and broaden WOTUS, which for the regulated community, will mean that many activities that would not have required a CWA permit will now require one. The second rulemaking process will aim to refine the WOTUS rule to establish “an updated and durable” definition of WOTUS.

The Agencies are now beginning stakeholder engagement to receive input regarding regional variability in water resources and how regulated entities have handled the varying definitions of WOTUS. This will include ten roundtables throughout different regions of the country to hear “what has worked and what has not within their geographic areas.” The Agencies also scheduled two webinars for the end of August 2021 to initiate Tribal Government-to-Government Consultation.

The Agencies are also accepting written comments from the public; written feedback can be posted to Docket ID No. EPA-HQ-OW-2021-0328 on www.Regulations.gov.

For questions regarding this Client Alert or for assistance submitting comments to the Agencies, please contact Lippes Mathias’ Environment & Energy Team Practice Leader, Ian Shavitz at ishavitz@lippes.com or Senior Associate, Christina Bonanni at cbonanni@lippes.com.